



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUL 7 3 50 PM '94

July 7, 1994

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

SUBJECT: Draft AO 1994-20

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for July 14, 1994.

Attachment

AGENDA ITEM
For Meeting of: JUL 14 1994

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3 ADVISORY OPINION 1994-20

4 Albert M. Edwards, Jr.
5 Treasurer, Committee for
6 Congressman Charlie Rose
7 P.O. Box 1178
8 211 Fairway Drive
9 Fayetteville, NC 28302-1178

DRAFT

Dear Mr. Edwards:

10 This responds to your letter dated June 9, 1994,
11 requesting an advisory opinion on behalf of the Committee for
12 Congressman Charlie Rose ("the Committee") concerning
13 application of the Federal Election Campaign Act of 1971, as
14 amended ("the Act"), and Commission regulations to the
15 proposed gift of valuable Committee property.

16 The Committee is the principal campaign committee of
17 Representative Charlie Rose who is a candidate for the 1994
18 election cycle. You state that the Committee presently owns
19 a 1991 "Fleetwood Flair RV" which it has used exclusively as
20 a mobile campaign office. The vehicle has no liens or other
21 encumbrances, and its purchase price was paid in full at the
22 time of purchase. [Committee reports filed with the
23 Commission disclose that \$38,660 of Committee funds was paid
24 on June 20, 1991, to Allsport RV Center in Fayetteville for a
25 "Mobil Campaign Office . . . title and license."] You
26 explain that the vehicle was used in the 1992 election cycle
27 and thereafter until April 25, 1994, serving as a mobile
28 office "enabling the candidate and other representatives of
29 the campaign to travel around the seventh district of North
30 Carolina and perform a variety of campaign related

3 functions."

4 On April 25, the Committee purchased a campaign office
5 and no longer uses or needs the vehicle for the campaign. It
6 has learned, however, that the Health Department of
7 Cumberland County, located in the 7th Congressional District
8 of North Carolina, has a need for a similar vehicle. The
9 Department would use the vehicle as a "mobile health clinic
10 to reach the rural areas of the district." You add that any
11 signs which identify Mr. Rose would be removed from the
12 vehicle.

13 The Committee requests an advisory opinion permitting it
14 to donate the vehicle to the Cumberland County Board of
15 Health. The Committee proposes to transfer ownership of the
16 vehicle to Cumberland County as a gift, and the Committee
17 would receive no consideration for the transfer. Furthermore,
18 it would not retain any "rights or interests of any kind" in
19 the vehicle. You also state that the Committee would receive
20 no tax benefit as a result of this transaction and intends
21 "to avoid the receipt of consideration or other benefit."

22 The Act provides, in part, that amounts "received by a
23 candidate as contributions that are in excess of any amount
24 necessary to defray his expenditures . . . may be contributed
25 to any organization described in section 170(c) of title 26,
26 or may be used for any other lawful purpose" except that such
27 amounts may not be converted by any person to any personal
28 use. 2 U.S.C. §439a. Commission regulations similarly
29 provide that excess campaign funds may be contributed to any
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3 section 170(c) organization or may be used for any lawful
4 purpose, but may not be converted to personal use. 11 CFR
5 113.2(b), 113.2(d).

6 The regulations define the phrase "excess campaign
7 funds" to mean "amounts received by a candidate as
8 contributions which he or she determines are in excess of any
9 amount necessary to defray his or her campaign expenditures."
10 11 CFR 113.1(e). In several past advisory opinions, the
11 Commission has concluded that non-cash assets of a
12 candidate's campaign committee are also covered by the phrase
13 "excess campaign funds" and may be lawfully distributed under
14 2 U.S.C. §439a and the cited regulations. Advisory Opinion
15 1990-11 [donation to charities of handcrafted, silver belt
16 buckles initially contributed to candidate committee],
17 Advisory Opinions 1984-50 and 1981-11 [donations of candidate
18 caricature items and candidate committee's mailing list to
19 party committees], Advisory Opinion 1982-33 [gift of
20 campaign committee automobile to former Senator who was
21 exempt from personal use ban]; see Advisory Opinion 1990-26
22 [cash proceeds from sale of computer owned by committee of
23 retiring Member of Congress subject to same §439a rule as
24 other committee funds].

25 In addition, the Commission has previously considered
26 circumstances where a Member of Congress, who was also a
27 candidate for re-election, determined that funds received by
28 the campaign were in excess of amounts necessary to defray
29 campaign expenditures. The Commission concluded that the
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3 principal campaign committee of the Member/candidate could
4 donate the excess funds to a qualified section 170(c)
5 organization. Advisory Opinions 1992-21 and 1985-9.

6 The cited regulations and opinions are relevant in many
7 respects to the factual situation you describe. The
8 Committee continues to operate as the principal campaign
9 committee of a candidate who is seeking re-election. It owns
10 an unwanted, but still valuable, noncash asset that it wants
11 to donate to a local governmental entity which is described
12 in 26 U.S.C. §170(c). The relevant part of §170(c) provides
13 that any contribution or gift to a State or to any political
14 subdivision of a State is a "charitable contribution" if it
15 is "made for exclusively public purposes." The request
16 indicates that the Committee vehicle will be donated to a
17 county government for use by the county health department as
18 a mobile health clinic serving a segment of the public.
19 Therefore, the Commission concludes that the described
20 Committee gift is expressly permitted under the §170(c)
21 clause of 2 U.S.C. §439a. Accordingly, the Committee may
22 donate and transfer ownership of the vehicle to the
23 Cumberland County, North Carolina, Health Department.

24 The Committee also seeks the Commission's advice as to
25 how and when the transaction should be disclosed on Committee
26 reports filed under the Act.

27 The Act and Commission regulations provide that the term
28 "expenditure" includes the distribution of anything of value
29 by any person for the purpose of influencing a Federal
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3 election. 2 U.S.C. §431(9)(A)(i), 11 CFR 100.8(a)(1). A
4 principal campaign committee is required to identify each
5 person to whom it makes an expenditure "to meet the
6 committee's operating expenses" if the amount or value of the
7 expenditure exceeds an aggregate (or total) amount of \$200
8 for the calendar year. 11 CFR 104.3(b)(4)(i), see 2 U.S.C.
9 §434(b)(5)(A).^{1/} In addition, any such candidate authorized
10 committee is required to identify any person to whom it makes
11 any disbursement in an "aggregate amount or value" exceeding
12 \$200 in the calendar year. 2 U.S.C. §434(b)(6)(A), 11 CFR
13 104.3(b)(4)(vi) [emphasis added].

14 In the situation presented here it appears that the
15 described gift will not be delivered in any manner or
16 circumstances indicating the Committee's purpose is to
17 influence Mr. Rose's re-election. The request indicates that
18 the Committee no longer has any need to use the vehicle for
19 any campaign purpose and intends to avoid receiving any
20 consideration or other benefit from making the gift.^{2/}

21
22
23 ^{1/} The cited provisions further require that other
24 information must also be disclosed if the expenditure or
disbursement is required to be itemized. Namely, the date,
amount and purpose of the transaction.

25 ^{2/} The Commission notes that if the Committee delivers the
26 vehicle to the County in circumstances where a public
27 ceremony or event is sponsored by either Mr. Rose or the
28 County, which is attended by him or his representatives, then
29 the gift would be viewed as an expenditure to influence his
30 re-election to Federal office. This would not bar the gift,
but would require that it be reported as a campaign
expenditure by the Committee, instead of as an other
disbursement. The same memo entry reporting procedure, as
discussed below, would apply.

Accordingly, the Commission concludes that the gift is not an expenditure by the Committee, but is instead a Committee disbursement of something of value. It should therefore be reported as an "other disbursement" at fair market value, which can be determined from used motor vehicle pricing manuals (e.g. "blue book") covering North Carolina, by memo entry on a separate Schedule B for FEC Form 3. The transaction should be included in the Committee report covering the period when delivery of the vehicle is made to the County. As a memo entry, the Committee gift would not affect reported cash outlays or ending cash balance for the reporting period and would not be included in the amounts presented on the summary pages of the Committee's report.

The Commission expresses no opinion as to any tax ramifications related to the Committee's gift, nor as to the possible application of House rules to the gift, because those issues, if any, are not within its jurisdiction.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. §437f.

For the Commission,

Trevor Potter
Chairman

Enclosures (AOs 1992-21, 1990-26, 1990-11, 1985-9, 1984-50, 1982-33, and 1981-11)